

REMARKS

I. PRELIMINARY REMARKS

The present invention is directed to the discovery that a composition including constituents of blueberry, bilberry, cranberry, elderberry, raspberry, and strawberry provides a composition with unexpected, greater-than-additive antioxidant values.

II. OUTSTANDING REJECTIONS

Claims 51-53, 76, 84 and 85 under 35 U.S.C. 103(a) as being obvious over Bomser et al. Planta Med. 3:212-6 (1996), Moyer et al. J. Agric. Food Chem. 50:519-525 (2002), Wedge et al. J. Med. Food 4(1):49-51 (2001), Dufour et al. French Publication No. 2789269, Liu et al. J. Agric. Food Chem. 50:2926-2930 (2002), Xue et al. Carcinogenesis 22(2):351-356 (2001), Kandil et al. J. Agric. Food Chem. 50(5):1063-1069 (2002), and Gaudout et al. U.S. Patent No. 7,041,322 in view of Prior et al. J. Agric. Food Chem. 45:2686-2693 (1998), Wang et al. J. Agric. Food Chem. 44:701-705 (1996), Prior et al. J. AOAC Intl. 83(4):950-956 (2000), and Wang et al. J. Agric. Food Chem. 48:140-146 (2000).

III. PATENTABILITY ARGUMENTS

The obviousness rejection over the combination of references should be withdrawn because there is no teaching in the art of the specifically recited combination of ingredients or that such a composition would have an unexpectedly high antioxidant activity which is greater than the additive activity of its component parts.

While the Office Action discloses the high and low ORAC assay values of the various components of Applicant's composition those values are necessarily part of the prior art and thus are "expected." Similarly, it would further be expected that foods with higher ORAC values would raise the potency on a per weight basis of an antioxidant composition while foods with lower ORAC values would lower the potency of such compositions on a per weight basis. It would further be expected that a food composition resulting from the combination of many such antioxidant foodstuffs would have an ORAC value equal to the weight averaged value of its components. To the extent that "it would have been customary

for an artisan of ordinary skill to determine the optimal amount of ingredient to add in order to best achieve the desired results” optimizing is not the same as discovering a synergy.

What would not be expected and what is not taught by the cited references is that the resulting composition would have an ORAC value greater than the weight average of its constituents as demonstrated in the Rule 132 Declaration submitted by Debasis Bagchi. Accordingly, the rejection for obviousness under 35 U.S.C. §103(a) should be withdrawn.

CONCLUSION

For the foregoing reasons, it is submitted that each of claims 51-53, 76, 84 and 85 should now be allowed. Should the Examiner wish to discuss any issues of form or substance, she is invited to contact the undersigned attorney at the number below.

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Respectfully submitted,

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